

Message Text

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61
ORIGIN L-03

INFO OCT-01 EUR-25 NEA-10 ISO-00 IO-13 CAB-09 DOTE-00

FAA-00 CIAE-00 COME-00 DODE-00 EB-11 INR-10 NSAE-00

RSC-01 INRE-00 SSO-00 SS-15 NSC-10 NSCE-00 USIE-00

PA-03 PRS-01 H-03 /115 R

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9/14/73 EXT 23970

APPROVED BY L:GHALDRICH

IO/TRC-MR. GRIP

CAB: GRINGERY (SUB)

DOT: DRISCOLL (SUB);

FAA: STEWART (SUB)

L/UNA:SNELSON

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O R 142344Z SEP 73

FM SECSTATE WASHDC

TO AMEMBASSY ROME IMMEDIATE

INFO AMEMBASSY TEL AVIV

AMCONSUL MONTREAL

AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

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E.O. 11652: GDS

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: CHICAGO

AMENDMENT SANCTIONS PROPOSALS.

REFS: (A) ROME 9615; (B) ROME 9353

1. DEPARTMENT FEELS DEL POSITION DESCRIBED PARA 6 REFTEL

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(A) MAY BE UNDULY NEGATIVE. WHILE SANCTIONS IN AN

AMENDMENT TO CHICAGO CONVENTION CANNOT BE DESCRIBED AS A MAJOR ACCOMPLISHMENT, WE BELIEVE IT SHOULD BE VIEWED AS A STEP, THOUGH SMALL, IN THE RIGHT DIRECTION WITH REGARD TO A SUBJECT US HAS ADVOCATED FOR 3 YEARS AND MET CONSIDERABLE RESISTANCE TO UNTIL RECENTLY. WE HAVE ACCEPTED THAT INDEPENDENT CONVENTION MAY HAVE NO MACHINERY AT ALL FOR SANCTIONS; IT SEEMS TO US THAT EVEN LIMITED SANCTION MACHINERY IN CHICAGO AMENDMENT WOULD BE A STEP BEYOND THIS.

2. DEPARTMENT BELIEVES UK/SWISS PROPOSAL SHOULD, THEREFORE, BE SUPPORTED EVEN IN EVENT OF ADVERSE DECISION ON ARTICLE 86. AND IF PROPOSED ARTICLE 86 IS TO FAIL DEL SHOULD EXPLORE POSSIBLE INTERMEDIATE POSITIONS REGARDING SUSPENSION OF SANCTIONS PENDING ICJ APPEAL. WE ARE THINKING, IN PARTICULAR, OF PROVISION FOR IMPOSITION OF SANCTIONS PENDING ICJ DETERMINATION UNLESS ICJ INDICATES, IN ACCORDANCE WITH ARTICLE 41 OF ICJ STATUTE, THAT SANCTIONS SHOULD BE SUSPENDED AS PROVISIONAL MEASURE TO PROTECT RIGHTS OF A PARTY. (SUCH PROVISIONAL MEASURE CAN BE TAKEN BY KCJ ALMOST IMMEDIATELY UPON APPEAL BEING MADE TO IT.) WHILE IT IS NOT CLEAR WHETHER SUCH PROVISIONAL MEASURES ARE BINDING, THEY COULD BE MADE SO WITH APPROPRIATE PROVISION IN ART. 86 FOR PARTIES TO THE AMENDMENT. WE SEE FIRST FALL-BACK AS PROVISION THAT SANCTION APPLIES UNTIL KCJ FINAL DECISION UNLESS ICJ DECIDES AS PROVISIONAL MEASURE THAT IT SHALL NOT, AND SECOND FALL-BACK AS PROVISION THAT SANCTION DOES NOT APPLY UNLESS ICJ DECIDES IT SHOULD (ALTHOUGH LATTER WOULD BE MORE DIFFICULT FOR COURT TO DO SINCE IT HARD TO ARGUE PROVISIONAL APPLICATION OF SANCTIONS NECESSARY "TO PRESERVE THE RESPECTIVE RIGHTS OF EITHER PARTY.")

3. IN EVENT UK/SWISS PROPOSAL LOSES, DEL SHOULD EXPLORE AVENUES TO TOUGHEN UP QUTAR PROPOSAL AS MUCH AS POSSIBLE, AND BE PREPARED TO SUPPORT IT EVEN IF THESE EFFORTS FAIL. WE THINK IN PARTICULAR THAT A HELPFUL AMENDMENT TO IT WOULD BE PROVISIONS TO EXPEDITE CONVENING OF ASSEMBLY FOR SANCTIONS DECISIONS.

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4. WE AGREE SUDAN PROPOSAL IS VERY RETROGRADE STEP AND SHOULD BE OPPOSED. ANY PROPOSAL PUTTING DECISIONS ON CHICAGO CONVENTION VIOLATIONS AND DECISION ON SANCTIONS TOGETHER WHOLLY IN HANDS OF ASSEMBLY SHOULD BE OPPOSED. IT APPEARS TO US IMPRACTICAL AND UNSOUND POLICY TO PUT FACT-FINDING AND QUASI-JUDICIAL FUNCTIONS OF DETERMINING CONVENTION VIOLATIONS IN HANDS OF ASSEMBLY.

5. ABOVE INSTRUCTIONS REFLECT POSITION DEL HAS
REPORTED PREVIOUSLY (REFTEL B PARA 5F) TO CONTINUE EFFORT
FOR A STRONG AMENDMENT ON ITS OWN MERITS. DEL MAY ALTER
THEM IN ITS DISCRETION IN ORDER TO ACHIEVE US BASIC
OBJECTIVES FOR INDEPENDENT CONVENTION. RUSH

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